



STATE BOARD OF EQUALIZATION

February 23, 1972

Mr. B. J. A---
G---, R---, S--- &
Q---
XXXX --- Blvd., XXth Floor
--- ---, CA XXXXX

SR -- XX XXXXXX
M--- J. W--- Co.

Dear Mr. A---:

We have completed our review of the above named taxpayer's petition for redetermination of sales and use taxes.

The question presented is whether the sales tax has been properly applied to retail sales of motor vehicles to customers residing outside California.

It is contended that the transactions are exempt from the sales tax and that petitioner was not authorized to collect the use tax directly from the customers (Revenue and Taxation Code section 6292).

The particular exemption section with which we are here concerned is section 6282 of the Revenue and Taxation Code which reads as follows:

“6282. Vehicles--manufacturer, dealer, or dismantler. There are exempted from the computation of the amount of the sales tax the gross receipts from sales of vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, or dismantler.

“This exemption does not extend to the rentals payable under a lease of tangible personal property.”

As a corollary to this exemption and as part of the statutory scheme, section 6292 provides in pertinent part:

“6292. Registration -- Department of Motor Vehicles. (a) Except when the sale is by lease, when a vehicle required to be registered under the Vehicle Code is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer or dismantler, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle must pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 4750.5 of the Vehicle Code.” (Emphasis added.)

We understand that the petitioner was not required to be licensed or certificated pursuant to the California Vehicle Code as a manufacturer, dealer or dismantler. Therefore, the question is narrowed to determining if the property sold were “sales of vehicles required to be registered under the Vehicle Code.” In determining the meaning intended by this provision the intent of the Legislature is the controlling consideration (Select Base Materials v. State Board of Equalization, 51 Cal. 2d 640). In determining the legislative intent consideration must be given to the whole statute and reconciled with reasonable application to carry out the policy and purpose of the legislation (Bethlehem Pacific Coast Steel Corp. v. Franchise Tax Board, 203 Cal. App. 2d 458).

Considering the purpose of the legislation and the end sought to be achieved we believe that the Legislature intended that the classification of the “property sold” as a vehicle required to be registered under the Vehicle Code be made with respect to the transaction with the particular purchaser and not on the basis of any prior classification or from the fact that the particular property was a vehicle of a type subject to registration. The clear purpose of the enactment was to exempt certain sales transactions from the sales tax and subject them to use tax at the time the purchaser registered the vehicle with the Department of Motor Vehicles. If the Legislature had intended a general exemption from the sales tax for all sales of motor vehicles made by persons other than a licensed or certificated dealer, manufacturer or dismantler it would not have been necessary to include the registration requirement as a condition for allowance of the sales tax exemption.

Section 4000 of the California Motor Vehicle Code generally requires registration of any vehicles to be operated on the public highway and section 5902 of the same code requires any transferee to make application for a transfer of registration within 10 days of the date of the actual transfer. [However, Vehicle Code section 4003 provides an exemption from registration for vehicles operated on the highway only for purposes of removal from this state. While the permit provision is considered to be in lieu of registration it is significant to note that the permits may be secured in advance in booklet form. It contains no requirement for direct payment of use taxes by the purchaser. It is our conclusion that these provisions support a finding that the sales of vehicles here considered were not required to be registered under the Vehicle Code.

We have reviewed Ryan v. Mike-Ron Corp., 226 Cal. App. 2d 71, cited in your petition and other cases dealing with the classification of vehicles required to be registered under Vehicle Code section 4000, et seq. The Ryan case is concerned only with the scope of Civil Code section 2982 relating to automobile conditional sales contracts. The court's opinion specifically recognizes that it would have no application to vehicles which are exempt from registration (see comment at page 77). Other ruling case law recognizes a distinction between vehicles of a type subject to registration and vehicles actually required to be registered (T. E. Connelly, Inc. v. State of California, 72 Cal. App. 2d 145, 149; also see 41 Ops. Cal. Atty. Gen. 129, 132).

Since the motor vehicles sold were not vehicles required to be registered under the Vehicle Code it follows that the exemption provided by section 6282 is not applicable and the transactions were properly subjected to the sales tax. Accordingly, we have recommended that the board deny your client's petition and redetermine the tax as originally determined. If after reviewing our letter you have any questions about our conclusions or the further action to be taken we shall be pleased to consider them.

Very truly yours,

W. E. Burkett
Tax Counsel

WEB:kc